

# REQUEST FOR PROPOSAL



Department of Executive Services  
Finance and Business Operations Division  
Procurement and Contract Services Section  
206-684-1681 TTY Relay: 711

DATE ADVERTISED: **November 18, 2004**

RFP Title: **Waterborne Transit Policy Study**  
Requesting Dept./ Div.: **Department of Transportation – Transit Division**  
RFP Number: **173-04 CMB**  
Due Date: **December 14, 2004 – no later than 2:00 P.M.**  
Buyer: **Cathy M. Betts** [cathy.betts@metrokc.gov](mailto:cathy.betts@metrokc.gov), (206) 263-4267

Pre-Proposal Conference:

A conference to discuss questions related to this RFP shall be held at **10:00 a.m. on Thursday, December 2, 2004**, in Conference Room 8A on the 8<sup>th</sup> Floor of the Exchange Building, 821 Second Avenue, Seattle, WA 98104.

Sealed Proposals are hereby solicited and will **ONLY** be received by

**King County Procurement Services Section  
Exchange Building, 8<sup>th</sup> Floor  
821 Second Avenue  
Seattle, WA 98104-1598**

Office Hours - 8:00 a.m. - 5:00 p.m.  
Monday - Friday

**SUBMITTERS MUST COMPLETE AND SIGN THE FORM BELOW (TYPE OR PRINT)**

Company Name		
Address		City/State/Zip Code
Signature	Authorized Representative / Title	
E-mail	Phone	Fax

This Request for Proposal will be provided in alternative formats such as Braille, large print, audio cassette or computer disk for individuals with disabilities upon request.

Sealed proposals are hereby solicited and will be received only at the office of the King County Procurement Services Section at 821 Second Avenue, 8<sup>th</sup> Floor, Seattle, Washington, 98104 no later than 2 p.m. on the date noted above regarding a *Waterborne Transit Policy Study* for the *King County Department of Transportation – Transit Division*. These services shall be provided to King County in accordance with the following and the attached instructions, requirements, and specifications.

**Submittal:** King County requires the Proposer to sign and return *this entire Request for Proposal (RFP) document*. The Proposer shall provide *one unbound original* and *five (5) copies* of the proposal response, data or attachments offered, for *six (6) items* total. The original in both cases shall be noted or stamped "Original".

**Pre-Proposal Conference:** A conference to discuss questions related to this RFP shall be held at 10:00 a.m. on Thursday, December 2, 2004, in Conference Room 8A on the 8<sup>th</sup> Floor of the Exchange Building, 821 Second Avenue, Seattle, WA 98104. See link for driving instructions.

[http://www.metrokc.gov/finance/procurement/find\\_us.asp](http://www.metrokc.gov/finance/procurement/find_us.asp)

**Questions:** After the Pre-Proposal Conference, Proposers will be required to submit any further questions in writing prior to the close of business Thursday, December 2, 2004 in order for staff to prepare any response required to be answered by Addendum. Questions are best received and most quickly responded to when sent via e-mail directly to the following King County procurement personnel: *Primary* – Cathy Betts, Buyer [cathy.betts@metrokc.gov](mailto:cathy.betts@metrokc.gov) / *Secondary* – Roy L. Dodman, Senior Buyer [roy.dodman@metrokc.gov](mailto:roy.dodman@metrokc.gov). Questions may also be sent via fax or mail to the address above.

## **SECTION I – GENERAL INFORMATION**

- A. King County is an Equal Opportunity Employer and does not discriminate against individuals or firms because of their race, color, creed, marital status, religion, age, sex, national origin, sexual orientation, or the presence of any mental, physical or sensory handicap in an otherwise qualified handicapped person.
- B. All submitted proposals and evaluation materials become public information and may be reviewed by appointment by anyone requesting to do so *at the conclusion* of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between King County and the selected Consultant. Please note that if an interested party requests copies of submitted documents or evaluation materials, a standard King County copying charge per page must be received prior to processing the copies. King County *will not* make available photocopies of pre-printed brochures, catalogs, tear sheets or audio-visual materials that are submitted as support documents with a proposal. Those materials will be available for review at King County Procurement.
- C. No other distribution of proposals will be made by the Proposers prior to any public disclosure regarding the RFP, the proposal or any subsequent awards without written approval by King County. For this RFP all proposals received by King County shall remain valid for ninety (90) days from the date of submittal. All proposals received in response to this RFP will be retained.
- D. Proposals shall be prepared simply and economically, providing a straightforward and concise but complete and detailed description of the Proposer's abilities to meet the requirements of this RFP. Fancy bindings, colored displays and promotional materials are not desired. Emphasis shall be on completeness of content.
- E. King County reserves the right to reject any or all proposals that are deemed not responsive to its needs.
- F. In the event it becomes necessary to revise any part of this RFP, addenda shall be created and posted at the King County Procurement web site. Addenda will also be conveyed to those potential submitters providing an accurate e-mail address. If desired, a hard copy of any addenda may be provided upon request.
- G. King County is not liable for any cost incurred by the Proposer prior to issuing the contract.
- H. A contract may be negotiated with the Proposer whose proposal would be most advantageous to King County in the opinion of the King County Department of Transportation, all factors considered. King County reserves the right to reject any or all proposals submitted.

- I. It is proposed that if a selection is made as a result of this RFP, a contract with a fixed price/prices will be negotiated. Negotiations may be undertaken with the Proposer who is considered to be the most suitable for the work. This RFP is primarily designed to identify the most qualified firm. Price and schedule will be negotiated with the "first choice" Proposer; negotiations may be instituted with the second choice and subsequent Proposer until the project is canceled or an acceptable contract is executed.
- J. This RFP shall be available for use by all King County Departments, Divisions and Agencies. For orders placed by the County's Transit Division, the Contractor will be required to sign and comply with the Federal Transit Administration's (FTA)'s required documentation.
- K. The contents of the proposal of the selected Proposer shall become contractual obligations if a contract ensues. Failure of the Proposer to accept these obligations may result in cancellation of their selection.
- L. A contract between the Consultant and King County shall include all documents mutually entered into specifically including the contract instrument, the RFP, and the response to the RFP. The contract must include, and be consistent with, the specifications and provisions stated in the RFP.
- M. News releases pertaining to this RFP, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the King County Department of Executive Services.
- N. King County Code 4.16.025 prohibits the acceptance of any proposal after the time and date specified on the Request for Proposal. There shall be no exceptions to this requirement.
- O. King County agencies' staffs are prohibited from speaking with potential Proposers about the project during the solicitation.

Please direct all questions to:

Cathy M. Betts / Buyer  
(206) 263-4267  
[cathy.betts@metrokc.gov](mailto:cathy.betts@metrokc.gov)

or Roy L. Dodman / Senior Buyer  
(206) 263-4266  
[roy.dodman@metrokc.gov](mailto:roy.dodman@metrokc.gov)

NOTE: Documents and other information is available in alternate formats for individuals with disabilities upon advance request by calling Mary Lou Allwine at 206-296-4210 or TTY711.

- P. Protest Procedure - King County has a process in place for receiving protests based upon either proposals or contract awards. If you would like to receive or review a copy, please contact the Buyer named on the front page of this document or call Procurement Services at 206-684-1681.
- Q. Electronic Commerce and Correspondence. King County is committed to reducing costs and facilitating quicker communication to the community by using electronic means to convey information. As such, most Invitations to Bid and Requests for Proposal, as well as related exhibits, appendices, and issued addenda can be found on the King County Internet Web Site, located at <http://www.metrokc.gov/finance/procurement>. Please refer to the "RFPs, RFQs & ITBs / New / Consultants" portion of the site (note: some documents or portions thereof may not be posted on the site. Please note any special messages regarding a particular solicitation). This information is posted at the Web Site as a *convenience* to the public, and is not intended to replace the King County process of formally requesting bid documents and providing the County with contact information for the potential proposer. Each proposer bears the responsibility to confirm the completeness and accuracy of all documents pertaining to a given solicitation, including the receipt of all issued addenda.

If a proposer downloads a document from the Web Site and does not contact the Procurement Office to obtain a hard copy, the proposer *must* use the "Feedback" (Envelope) button at the bottom of the Web page to convey the proposer's company name, contact name, mailing address, and phone/fax number to the County. Please note which document/documents were downloaded.

After proposals have been opened in public, the County will post a listing of the consultants submitting proposals at the King County Internet site. Please refer to the "RFPs, RFQs & ITBs / Awarded / Consultants" portion of the site for a listing, as well as a notification of a final award.

Unless otherwise requested, letters and other transmittals pertaining to this RFP will be issued to the e-mail address noted in our files, and after submittal, noted on the first page of this document. If other personnel should be contacted via e-mail in the evaluation of this proposal, or to be notified of evaluation results, please complete the information in the table below.

Contact Name	Title	Phone	E-mail address

- R. Washington State Public Disclosure Act (RCW 42.17) requires public agencies in Washington to promptly make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act, or are otherwise privileged.
- S. Proposals submitted under this RFP shall be considered public documents and with limited exceptions proposals that are recommended for contract award will be available for inspection and copying by the public.

If a Proposer considers any portion of his/her proposal to be protected under the law, the Proposer shall clearly identify on the page(s) affected such words as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." The Proposer shall also use the descriptions above in the following table to identify the effected page number(s) and location(s) of any material to be considered as confidential (attach additional sheets as necessary). If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the law. If the material is not exempt from public disclosure law, the County will notify the Proposer of the request and allow the Proposer ten (10) days to take whatever action it deems necessary to protect its interests. If the Proposer fails or neglects to take such action within said period, the County will release the portion of the Proposal deemed subject to disclosure. By submitting a Proposal, the Proposer assents to the procedure outlined in this paragraph and shall have no claim against the County on account of actions taken under such procedure.

Type of exemption	Beginning Page / Location	Ending Page / Location

- U. Proposers are urged to use recycled/recyclable products and both sides of paper for printed and photocopied materials, whenever practicable, in preparing responses to this RFP.
- V. Bid Identification Label: Please see the Bid Identification Label on the last page of this document.

## SECTION II – PROJECT SPECIFICATIONS AND SCOPE OF WORK.

### PART 1 - INTRODUCTION

The King County Department of Transportation, Metro Transit Division in response to Six-Year Transit Development Plan Strategy S-14 and the potential elimination of the Vashon Island passenger-only ferry service by Washington State Ferries is soliciting request for proposals for a planning and policy study related to waterborne transit. The purpose of the study is to determine under what conditions and circumstances it may be appropriate for King County to invest in passenger ferry service. The study will assist King County in the development of a plan for continuing passenger-only ferry service for Vashon Island, including an analysis of available technologies to reduce operating costs and improve service. In addition, the study will analyze potential markets, operating and funding strategies, vessel technology, and possible public and private roles involved in the implementation of a King County ferry service program. Through the evaluation of the Vashon Island route and three other sample routes each operating under different scenarios and funding strategies, the study will analyze cost, ridership, benefits; and recommend potential policy, criteria and next steps.

### PART 2 - SCOPE OF WORK

**Task 1 –Work Program Development** – Develop a detailed work program and schedule that incorporates the tasks below, identifies milestones and decision points. King County expects that this work will begin between January 15, 2005 and January 30, 2005 and be completed by June 2005.

- Task 1 – Deliverable: Work Plan incorporating Tasks 2 – 7.

The Consultant shall submit the work plan to the County's Project Manager for approval within 10 days after receiving a Notice to Proceed.

**Task 2 – Inventory and synthesis of previous studies.** Catalog work done to date on passenger ferry options to take maximum advantage of previous work. Include the history of passenger ferry service locally and nationally; a summary of previous studies; and a summary of analyses and findings related to passenger demand, operating models, financing options, fares, service levels, vessel & facilities designs, available technologies, landside facilities, land access, etc.

- Task 2 – Deliverable: Report summarizing information identified above.

This deliverable will be submitted in accordance with the approved work plan schedule.

**Task 3 – Explore and review possible operating, financing and partnership options.** Identify approaches to operating and financing passenger ferry for 1) Vashon Island to downtown Seattle, and 2) three other routes within King County. Approaches will include direct county operation, contracted, or franchised private operation, or purely private operation. Financing options will include use of transit funds (including implications of the County's sub-area service allocation policies), ferry district revenues, and use of different fare structures. Public-private partnership options will address possible terms of County participation, including provision of capital facilities, direct service or fare subsidies.

- Task 3 – Deliverable: Report identifying and analyzing the feasibility of approaches for operating and financing passenger ferry service.

This deliverable will be submitted in accordance with the approved work plan schedule.

**Task 4 – Develop sample routes and implementation strategies.** Work with the stakeholder committee to develop representative passenger ferry routes that serve Vashon, West Seattle, Lake Union, and Lake Washington travel markets and reasonable implementation scenarios.

- Task 4 – Deliverable: Report identifying routes and addressing implementation scenarios.

This deliverable will be submitted in accordance with the approved work plan schedule.

**Task 5 – Assess relative costs and effectiveness of each option.** For each combination of service and implementation strategies, identify service hours, vessel and terminal needs, projected usage, fare revenue,

subsidy requirements, and other relevant evaluation data. Summarize strengths, weaknesses and issues related to each option and provide comparisons with land based transit options.

- Task 5 – Deliverable: Report identifying and summarizing data for each option.

This deliverable will be submitted in accordance with the approved work plan schedule.

**Task 6 – Participate in stakeholder outreach.** Participate in two Stakeholder outreach meetings. King County's Department of Transportation, Community Relations & Communications section will and arrange and conduct the Stakeholder outreach program including production of meeting minutes. In conjunction with the project manager, the consultant team will help develop workshop agenda, and develop and present materials as required. The purpose of the Stakeholder's group is to assist in the development and analysis of options, and comment on proposed project recommendations.

- Task 6 – Deliverables: Presentation materials.

The deliverables will be submitted in accordance with the approved work plan schedule.

### **Task 7 – Develop recommendations**

- Conditions when County participation in water transportation should be considered
  - Institutional and operating options and recommendations
  - Recommendation on financing and fare options
  - Source and nature of County subsidy, and expectations of other partners
- Task 7 – Deliverable: Final Report identifying recommendations. The written report must include a technical appendix presenting all working papers pertinent to the recommendations of the consultant report.

This deliverable will be submitted in accordance with the approved work plan schedule.

## **PART 3 - DELIVERABLES**

The consultant will be required to provide acceptable "preliminary" and "final" drafts of written deliverables before final acceptance by King County. This applies to each deliverable identified as a report for Tasks 2 – 7. In addition to the deliverables identified for each task, the consultant shall submit regular 30-day progress reports to the Project Manager. Such reports will describe the work completed, work in progress, and work scheduled for the up coming month/quarter.

## **PART 4 – BUDGET**

King County's budget for this Scope of Work is \$150,000.

## **PART 5 - QUALIFICATIONS**

The consultant team shall have experience and expertise in the areas of waterborne transportation, transportation planning, travel forecasting, public policy development, labor relations, facility design, financial analysis and environmental impact analysis.

## **PART 6 - PROPOSAL REQUIREMENTS**

Proposers shall submit one (1) unbound original and five (5) copies of the proposal. The proposal shall be limited to the number of pages as specified below. The entire submitted proposal including any forms, etc., is to be consecutively numbered. This does not include samples of materials.

Your proposal shall use at least 12-point type. Proposers are asked to use recycled products whenever practicable.

Each proposal shall contain the following information in the following order:

**A. Cover Letter** The cover letter shall include the name and phone number of a contact person.

**B. Technical Proposal** (To include the following)

1. Project Organization

- Identify the principal officers and the key personnel who shall be working on this project, including sub-consultant(s) if they shall be used.
- Submit one or two paragraphs about each team member (including sub-consultants) describing their responsibilities, their areas of expertise and how they shall contribute to the project.
- The proposal shall include a management plan and organizational chart for the entire team and resumes for all personnel assigned to perform work under this contract. The resumes shall list professional experiences in chronological order with dates (include resumes in appendices).
- Specify the number of years your organization and individual team members have been providing services applicable to this RFP. Include a description of the team's past experience working together.

2. Understanding of Goals & Issues

- The proposal shall demonstrate the proposer's understanding of the project goals, objectives and familiarity with the issues.

3. Approach and Methodology

- Provide a clear description of the approach, methods and work plans to be used to accomplish the work identified in this RFP.
- Describe how your team's project management style shall ensure that the work is performed effectively, on time and within budget.

**C. Qualifications and Experience**

- Describe your direct experience in performing the type of work specified in this RFP, including an understanding of the issues and approaches associated with waterborne transportation.
- Describe successes on previous projects analyzing waterborne transportation policy and financing issues and developing recommendations.
- Show successful performances on prior projects related to established schedules and budgets.

**D. References**

- Describe at least three (3) projects with public institutions/governmental organizations wherein the team members provided services related to those described in this document. For each project, include the following information:
- Provide the name of the client, name of the client's project manager, project manager's telephone number, the contract start and completion dates, actual contract completion date, project budget and actual project cost.
- List the personnel included on the team, their titles, and a description of the work they did on the contract.
- Provide a brief description of the project, its objectives and deliverables.
- Include samples of materials and deliverables produced for each project (include in appendices).

**E. Proposed Costs**

Provide the following cost information:

- Indicate the lump sum cost for the performance of each task identified in the Scope of Work. Include the total cost for performing the entire Scope of Work (Tasks 1-7).

**PART 7 – EVALUATION CRITERIA**

<b>1. Policy Analysis Experience and Capabilities</b>	<b>15 pts.</b>
<ul style="list-style-type: none"> <li>a. Experience in developing public policy recommendations and a record of accomplishment of unbiased independent analysis.</li> <li>b. Specific familiarity with policy questions related to the development of public private partnerships, transportation funding, labor relations and resource distribution.</li> <li>c. Recent experiences working on similar projects with public and private organizations that have jurisdictional, regulatory, and political powers that affect the success of the project.</li> </ul>	
<b>2. Transportation Analysis and Marine Transportation</b>	<b>15 pts.</b>
<ul style="list-style-type: none"> <li>a. The proposing firm's experience demonstrates specialized marine transportation experience and technical expertise in vessel design, the operation of passenger ferry service and landside requirements and environmental concerns.</li> <li>b. The proposing firm's experience demonstrates knowledge of transportation planning practices, including travel forecasting and problem solving techniques.</li> </ul>	
<b>3. Project Approach</b>	<b>30 pts.</b>
<ul style="list-style-type: none"> <li>a. The proposal demonstrates the project team's understanding of the project and the responsibilities of the consultant team</li> <li>b. The project approach shows creativity and innovation in meeting project objectives</li> <li>c. The project budget is adequate to complete the project considering the proposed approach</li> </ul>	
<b>4. Qualifications of Key Staff</b>	<b>10 pts.</b>
<ul style="list-style-type: none"> <li>a. Education and work experience of lead staff demonstrates the required expertise -- including technical analysis, critical thinking and policy development.</li> <li>b. Lead staff work history of recent success leading similar projects including the efficient and effective delivery of work products</li> <li>c. Lead staff demonstrate strong written and oral communication skills</li> </ul>	
<b>5. Experience and Qualifications of Project Team</b>	<b>10 pts.</b>
<ul style="list-style-type: none"> <li>a. The Project Team composition exhibits the appropriate expertise needed to successfully complete the scope of work</li> <li>b. The education and work experience of Project Team displays the appropriate expertise -- including technical analysis, critical thinking and policy development.</li> </ul>	



<b>6. Communication and Collaboration and Project Management Approach</b>	<b>10 pts.</b>
a. Demonstrates work collaboratively with County staff, other agencies, and organizations. b. Demonstrates ability to communicate effectively with the public, elected officials, and other audiences. c. Demonstrates the ability to fulfill contract requirements including such factors as control of costs, quality of work, ability to meet schedules, cooperation, responsiveness, and other managerial considerations. d. The proposing firm has the ability to accelerate the project schedule if necessary	
<b>7. Cost</b>	<b>10 pts.</b>
a. The overall competitiveness of the firm's price proposal	
<b>8. Interviews or Presentations (if conducted)</b>	<b>50 pts.</b>
a. Proposing firms may be required to demonstrate their ability to successfully complete the scope of work through in person interviews and/or presentations b. The County will notify firms in writing of the date, place, time, and format the interview or presentation. c. Failure to participate in such interviews or presentations shall result in a Proposer's disqualification from further consideration.	
<b>TOTAL POSSIBLE POINTS</b>	<b>150 pts.</b>

## **PART 8 – PROPOSED SCHEDULE (some dates tentative and subject to change)**

RFP Released .....	November 18, 2004
Pre-Proposal Meeting, 10 a.m. ....	December 2, 2004
Last Written Questions .....	December 2, 2004
Addendum Issued if Needed .....	December 7, 2004
Proposals due no later than 2 p.m. ....	December 14, 2004
Written Evaluation Period .....	December 15-21, 2004
Interviews, if needed .....	December 17, 2004
Contract Awarded .....	December 22, 2004

## **PART 9 – FEDERAL GUIDELINES**

### **A. Applicability and Federal Grant Contract**

This procurement is subject to a financial assistance contract between the County and the U.S. Department of Transportation. The successful Contractor is required to comply with all terms and conditions prescribed in third party contracts in the grant contract between the U.S. Department of Transportation (DOT) and the County.

New federal laws, regulations, policies and administrative practices may be established after the date this contract is established and may apply to this contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require subcontractors comply with revised requirements as well.

### **B. No Federal Government Obligations to Third Parties**

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by DOT. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. Equal Employment Opportunity

In connection with the execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(Authorities: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 et seq.; 29 CFR Part 1630; 41 CFR § 60-1.4).

D. Title VI Compliance

The Contractor shall comply with and shall ensure the compliance by all subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Justice, "Nondiscrimination in Federally-Assisted Programs — Implementation of Title VI of the Civil Rights Act of 1964," 28 CFR Part 42, (hereinafter "Regulations") as they may be amended from time to time.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

i. Nondiscrimination

The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, creed, sex, disability, age or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 42.104 of the Regulations.

ii. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive proposals or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, creed, sex, disability, age or national origin.

iii. Information and Reports

The Contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Department of Transportation (DOT) to be pertinent to ascertain compliance with such regulations, orders and instructions. The Contractor shall maintain all required records for at least three (3) years after the County makes final

payment and all other pending matters are closed. Where any information is required and it is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the County or the Department of Transportation, as appropriate, and shall set forth efforts made to obtain the information.

iv. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the County shall impose such contract sanctions as it or the DOT may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or,
2. Cancellation, termination or suspension of the Contract, in whole or in part.

v. Incorporation of Provisions

The Contractor shall include the provisions of paragraphs A through E of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the DOT may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

E. Labor Provisions - Non-Construction Contracts

i. Overtime Requirements

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week. (29 CFR § 5.5(b)(1))

ii. Violation: Liability for Unpaid Wages: Liquidated Damages

In the event of any violation of the clause set forth in paragraph A of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of paragraph A of this section in the sum of ten (\$10) dollars for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by paragraph A of this section. (29 CFR § 5.5(b)(2))

iii. Withholding for Unpaid Wages and Liquidated Damages

The Department of Transportation or the County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such

Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph B of this section. (29 CFR § 5.5(b)(3))

iv. **Payrolls and Basic Records**

The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of the Department of Transportation and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job. (29 CFR § 5.5(c))

v. **Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through E of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through E of this section. (29 CFR § 5.5(b)(4))

**F. Cargo Preference - Use of U.S. Flag Vessels or Air Carriers**

In the event that ocean shipment or international air travel is required for any equipment, material or commodities pursuant to this Contract, the Contractor shall:

- i. Utilize privately owned United States-flag commercial vessels to ship at least fifty (50%) percent of the gross tonnage involved, computed separately for dry bulk carriers, dry cargo liners and tankers, whenever shipping any equipment, materials or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- ii. Furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A of this section, to the County, through the prime Contractor in the case of subcontractor bills-of-lading, and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project
- iii. Utilize United States flag air carriers to the extent such carriers provide the air transportation needed, or accomplish the Contractor's mission. The Contractor agrees to utilize United States flag air carriers even though comparable or a different kind of service can be provided at less cost by a foreign air carrier, a foreign air carrier is preferred by or more convenient for the Contractor, or service by a foreign air carrier can be paid for in excess foreign currency, unless United States flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of those monies
- iv. Insert the substance of the provisions of this section in all subcontracts issued pursuant to this Contract.
- v. (Required by 46 CFR Part 381 and 41 CFR Part 301-3.6).

**G. Audit and Inspection of Records**

In the case of all negotiated contracts and contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive proposals procedures, Contractor agrees that the County, the Comptroller General of the United States or any of their duly

authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

#### H. Federal Government (DOT) Protest Procedures

Proposers are hereby notified that if this Contract is funded in whole or in part by the Federal Department of Transportation, the Federal Department of Transportation (DOT) may entertain a protest that alleges violation of federal law or regulation, or that the County failed to have or follow written protest procedures {28 CFR Part 66.36(12)}. Proposers must file a protest with the DOT not later than 5 working days after the County renders a final decision or 5 working days after the Proposer knows or has reason to know that the County has failed to render a final decision. The protesting party must notify the County if it has filed a protest with the DOT. After 5 days, the County will confirm with DOT that DOT has not received a protest.

The County will not award a contract for 5 working days following its decision on a Proposal protest or while a protest to the DOT is pending unless the County determines that: (1) the items to be procured are urgently required; (2) delivery of performance will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award will otherwise cause undue harm to the County or the Federal Government.

#### I. Privacy

Should the Contractor, or any of its subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any contractors, third party contractors, subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this contract will make this contract subject to termination.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract, which involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

#### J. Access Requirements for Individuals with Disabilities

The County and contractors are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and the following regulations and any amendments thereto:

- i. U.S. Department of Transportation (DOT) regulations, "Nondiscrimination on the Basis of Disability in State of Local Government Services," 28 CFR Part 35;
- ii. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- iii. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- iv. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- v. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and

K. Interest of Members or Delegates of Congress

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

L. Certification Regarding Debarment, Suspension and Other Responsibility Matters

Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note and federal regulations in 28 CFR 67, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this contract. To assure that such entities and individuals are not involved as participants on this DOT-financed contract, if the contract exceeds \$100,000, each Proposer shall complete and submit, as part of its Proposal, the certification contained in [Attachment K](#) for itself, its principals and its subcontractor(s) for any subcontract in excess of \$100,000. The inability of a Proposer to provide a certification in Attachment K will not necessarily result in denial of consideration for contract award. A Proposer that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation shall disqualify the Proposer from participation under this Proposal. The County, in conjunction with DOT, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the DOT.

The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Proposer or Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to the County. If it is later determined that the Proposer knowingly rendered an erroneous certification, or failed to notify the County immediately of circumstances that made the original certification no longer valid, the County may disqualify the Proposer. If it is later determined that the Contractor knowingly rendered an erroneous certification, or failed to notify the County immediately of circumstances which made the original certification no longer valid, the County may terminate the contract, in addition to other remedies available including DOT suspension and/or debarment.

M. Subcontractors' Certification Regarding Debarment, Suspension or Ineligibility

By submitting a Proposal for this Contract, the Proposer agrees that should it be awarded the Contract, it shall not knowingly enter into any subcontract exceeding \$100,000 with an entity or person who is debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds; and shall require each subcontractor to complete the certification provided in [Attachment L](#).

Each subcontract, regardless of tier, shall contain a provision that the subcontractor shall not knowingly enter into any lower tier subcontract with a person or entity that is debarred, suspended or declared ineligible from obtaining federal assistance funds, and a provision requiring each lower-tiered subcontractor to provide the certification set forth in Attachment L.

The Contractor shall require each subcontractor, regardless of tier, to immediately provide written notice to the Contractor if at any time the subcontractor learns that its, or a lower-tier certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor may rely upon the certifications of the subcontractors unless it knows that a certification is erroneous. The Contractor's knowledge and information regarding any subcontractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.

N. Disclosure of Lobbying Activities

Proposals in excess of \$100,000 require [Attachment I](#), "Certification Regarding Lobbying," and [Attachment J](#), "Disclosure of Lobbying Activities" (if appropriate), be completed and submitted to the County with the proposal, as required by 28 CFR Part 69, "New Restrictions on Lobbying."

The Contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of

Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 et seq., who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

O. Anti-Kickback

The County and contractors are required to comply with the Anti-Kickback Act of 1986, 41 USC §§ 51 et seq. Under state and federal law, it is a violation for County employees, Proposers, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.

"Kickback" as defined by Federal Acquisition Regulation (FAR) 52.203-7, and 41 USC § 52(2), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime Contractor, prime Contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

P. False or Fraudulent Statements or Claims

The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 et seq., as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies," 28 CFR Part 71, are applicable to this project.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

Q. Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 et seq.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

R. Environmental Requirements

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

i. Environmental Protection

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. DOT regulatory requirements on environmental matters at 28 CFR Part 61; Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 et seq. and 40 CFR Part 1500 et seq.

ii. Air Quality

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation

as required to assure notification to DOT and the appropriate U.S. Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to include this clause in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by DOT.

iii. Clean Water

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251 et seq. The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to DOT and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300h et seq. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by DOT.

iv. Historic Preservation

The Contractor agrees to assist the Federal Government in complying with section 106 of the National Historic Preservation Act, as amended, 16 USC § 470f, Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 USC § 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 USC §§ 469a-1 et seq. involving historic and archaeological preservation as follows:

1. The Contractor agrees to consult with the State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 CFR Part 800, and notifying DOT of those properties so affected.
2. The Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on those historic properties.

S. Preference for Recycled Products

To the extent practicable and economically feasible, the Contractor agrees to provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in the EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962, and Executive Order 12873.

T. Forms

Unless otherwise noted, the following completed forms will be required from the selected contractor, prior to contract award. They are also available at: [www.metrokc.gov/finance/procurement/forms.asp](http://www.metrokc.gov/finance/procurement/forms.asp)

[Attachment C](#) Equal Benefits Compliance Worksheet and Form. *Complete and submit when requested.*

[Attachment D](#) Personnel Inventory Report. *Complete and submit when requested.*

[Attachment E](#) Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity. *Complete and submit when requested.*

[Attachment I](#) Certificate of Lobbying Activities - *Complete and submit when requested.*

[Attachment J](#) Disclosure Form to Report Lobbying and Instruction - *Complete and submit when requested.*



- [Attachment K](#) Certificate Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions. ***Sign and submit with Proposal.***
- [Attachment L](#) Certification Regarding Debarment, Suspension, And Other Ineligibility And Voluntary Exclusion / Lower-Tier Covered Transactions ***Sign and submit with Proposal***
- [Attachment N](#) 504/ADA Assurance of Compliance – *Complete and submit when requested.*
- Certificate of Insurance and Endorsements – Have Insurance Agent e-mail or Fax to Buyer evidence of insurance from insurer(s) satisfactory to the County certifying to the coverages of insurance set forth in this ITB

### SECTION III - NONDISCRIMINATION AND AFFIRMATIVE ACTION

If a contract is awarded from this Request for Proposal, it will contain the following contract language:

#### PART 1: NON-DISCRIMINATION

- A. King County Code Chapters 12.16, 12.17 and 12.18 are incorporated by reference as if fully set forth herein and such requirements apply to this Contract; provided however, that no specific levels of utilization of minorities and women in the workforce of the Consultant shall be required, and the Consultant is not required to grant any preferential treatment on the basis of race, sex, color, ethnicity or national origin in its employment practices; and provided further that, notwithstanding the foregoing, any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents shall continue to apply.
- B. During the performance of this Contract, neither the Consultant nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract.
- C. The Consultant shall, prior to the commencement of the work and during the term of this Contract, furnish the County, upon request and on such forms as may be provided by the County, a report of the affirmative action taken by the Consultant in implementing the terms of this section. The Consultant will permit access by the County to the Consultant's records of employment, employment advertisements, application forms, other pertinent data and records related to this Contract for the purpose of monitoring and investigation to determine compliance with these requirements.
- D. The Consultant shall implement and carry out the obligations contained in its Affidavit and Certificate of Compliance regarding equal employment opportunity. Failure to implement and carry out such obligations in good faith may be considered by the County as a material breach of this Contract and grounds for withholding payment and/or termination of the Contract and dismissal of the Consultant.
- E. The Consultant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, RCW Chapter 49.60 and Titles VI and VII of the Civil Rights Act of 1964.
- F. During the performance of this Contract, neither the Consultant nor any party subcontracting under the authority of this Contract shall engage in unfair employment practices. It is an unfair employment practice for any:
  1. Employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
  2. Employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;

3. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefore, which indicates any discrimination unless based upon a bona fide occupational qualification;
4. Employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;
5. Employer, employment agency or a labor organization to retaliate against any person because this person has opposed any practice forbidden by KCC Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of KCC Chapter 12.18;
6. Publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of KCC Chapter 12.18.030C., or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification; and/or
7. Employer to prohibit any person from speaking in a language other than English in the workplace unless:
  - a. The employer can show that requiring that employees speak English at certain times is justified by business necessity, and
  - b. The employer informs employees of the requirement and the consequences of violating the rule.

## **PART 2: REQUIRED SUBMITTALS**

- A. All Consultants entering into a contract or agreement with King County valued at \$25,000 or more shall, after the proposer receives written notice of selection, submit the following:
  1. A Personnel Inventory Report on the form provided by the County.
  2. An Affidavit of Compliance demonstrating the Consultant's commitment to comply with the provisions of KCC Chapter 12.16.
  3. A Sworn Statement of Compliance with 12.16 from any labor union or employee referral agency that refers workers or employees or provides or supervises training programs from whom the Consultant obtains employees.
- B. The County will not execute any agreement or contract without prior receipt of fully executed forms listed in subparagraph A above.
- C. Assistance with the requirements of this Section and copies of Chapters 12.16, 12.17 and 12.18 are available from the Business Development & Contract Compliance (BDCC) Section, phone (206) 205-0700.

## **PART 3: NONDISCRIMINATION IN SUBCONTRACTING PRACTICES**

- A. Compliance with Initiative 200. In accordance with the provisions of Washington Initiative 200, no County Minority and Women Business (M/WBE) utilization requirements shall apply to this Contract. No minimum level of M/WBE sub-consultant participation or purchase from M/WBE certified vendors is required and no preference will be given by the County to a bidder or Proposer for their M/WBE utilization or M/WBE status. Provided, however, that any affirmative action requirements set forth in any federal regulations or statutes included or referenced in the Contract documents will continue to apply.
- B. Non-Discrimination. During the term of this Contract, the Consultant shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with sub-consultants and suppliers, the Consultant shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

During the performance of work performed under any Agreement resulting from this RFP, neither the consultant nor any party subcontracting under the authority of the agreement shall discriminate or engage in unfair contracting practices prohibited by K.C.C. 12.17.

- C. Record-Keeping Requirements. The Consultant shall maintain, for at least 6 years after completion of all work under this contract, records and information necessary to document its level of utilization of M/WBEs and other businesses as sub-consultants and suppliers in this contract and in its overall public and private business activities for the same period. The Consultant shall also maintain, for at least 6 years after completion of all work under this contract, all written quotes, bids, estimates or proposals submitted to the Consultant by all businesses seeking to participate on this Contract. Consultant shall make such documents available to the County for inspection and copying upon request. If this contract involves federal funds, Consultant shall comply with all record keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the contract documents.
- D. Open Competitive Opportunities. King County encourages the utilization of minority owned businesses ("MBEs") and women-owned businesses ("WBEs")(collectively, "M/WBEs") in County contracts. The County encourages the following practices to promote open competitive opportunities for small businesses including M/WBEs:
1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to provide project information and to inform M/WBEs and other firms of contracting and subcontracting opportunities.
  2. Placing all qualified small businesses attempting to do business in King County, including M/WBEs, on solicitation lists, and providing written notice of subcontracting opportunities to M/WBEs and all other small businesses capable of performing the work, including without limitation all businesses on any list provided by the County, in sufficient time to allow such businesses to respond to the written solicitations.
  3. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including M/WBEs.
  4. Establishing delivery schedules, where the requirements of this contract permit, that encourage participation by small businesses, including M/WBEs.
  5. Providing small businesses including M/WBEs that express interest with adequate and timely information about plans, specifications, and requirements of the contract.
  6. Utilizing the services of available community organizations, Consultant groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses including M/WBEs.

Further, the County encourages small businesses, including M/WBEs, to participate in the following practices to promote open competitive opportunities:

1. Attending a pre-bid or pre-solicitation conference, if scheduled by the County, to receive project information and to inform prime bidders/proposers of contracting and subcontracting capabilities.
  2. Requesting placement on solicitation lists, and receipt of written notice of subcontracting opportunities.
  3. Utilizing the services of available community organizations, Consultant groups, local assistance offices, the County, and other organizations that provide assistance in the recruitment and placement of small businesses and M/WBEs.
- E. Sanctions for Violations. Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract for which the Consultant may be subject to damages and sanctions provided for by contract and by applicable law.

#### **PART 4: REQUIREMENTS DURING WORK**

##### **A. Site Visits**

King County may at any time visit the site of the work and the Consultant's office to review records related to actual utilization of and payments to subcontracting firms. The Consultant shall maintain sufficient

records necessary to enable King County to review utilization of subcontracting firms. The Consultant shall provide every assistance requested by King County during such visits.

## **PART 5: COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED AND THE AMERICANS WITH DISABILITIES ACT OF 1990**

The Consultant shall complete a Disability Self-Evaluation Questionnaire for all programs and services offered by the Consultant (including any services not subject to this Contract) and shall evaluate its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Consultant shall complete a 504/ADA Disability Assurance of Compliance prior to execution of a contract.

### **SECTION IV - GENERAL CONTRACT REQUIREMENTS**

#### **PART 1: TERMINATION CLAUSES**

- A. This Contract may be terminated by the County without cause, in whole or in part, upon providing the Consultant ten (10) calendar days' advance written notice of the termination.

If the Contract is terminated pursuant to this Section IV, paragraph A: (1) the County will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and (2) the Consultant shall be released from any obligation to provide further services pursuant to the Contract.

- B. The County may terminate this Contract, in whole or in part, upon five (5) calendar days' advance written notice in the event: (1) the Consultant materially breaches any duty, obligation, or services required pursuant to this Contract, or (2) the duties, obligations, or services required herein become impossible, illegal, or not feasible.

If the Contract is terminated by the County pursuant to this Subsection IV(B) (1), the Consultant shall be liable for damages, including any additional costs of procurement of similar services from another source.

If the termination results from acts or omissions of the Consultant, including but not limited to misappropriation, nonperformance of required services or fiscal mismanagement, the Consultant shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the Consultant by the County.

- C. If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth above in Section II or in any amendment hereto, the County may, upon written notice to the Consultant, immediately terminate this Contract in whole or in part.

If the Contract is terminated pursuant to this Section IV, paragraph C: (1) the County will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and (2) the Consultant shall be released from any obligation to provide further services pursuant to the Contract.

Funding under this Contract beyond the current appropriation year is conditional upon appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, this contract will terminate at the close of the current appropriation year.

- D. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or law that either party may have in the event that the obligations, terms and conditions set forth in this Contract are breached by the other party.

#### **PART 2: INDEMNIFICATION AND HOLD HARMLESS**

- A. In providing services under this Contract, the Consultant is an independent contractor, and neither the Consultant nor its officers, agents or employees are an employee of the County for any purpose. The Con-

sultant shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits or taxes to, or on behalf of, the Consultant, its employees or others by reason of this Contract. The Consultant shall protect, indemnify and save harmless the County, its officers, agents and employees from and against any and all claims, costs and/or losses whatsoever occurring or resulting from 1) the Consultant's failure to pay any such compensation, wages, benefits or taxes; and 2) the supplying to the Consultant of work, services, materials and/or supplies by Consultant employees or other suppliers in connection with the performance of this Contract.

- B. The Consultant further agrees that it is financially responsible for and shall repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional acts or failure for any reason to comply with the terms of this Contract by the Consultant, its officers, employees, agents and/or representatives. This duty to repay the County shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.
- C. The Consultant shall protect, defend, indemnify, and save harmless the County, [and the State of Washington (when any funds for this Contract are provided by the State of Washington)] their officers, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Consultant, its officers, employees, and/or agents. The Consultant agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. For this purpose, the Consultant by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that County incurs attorney fees and/or costs in the defense of claims, for damages within the scope of this section, such fees and costs shall be recoverable from the Consultant. In addition King County shall be entitled to recover from the Consultant fees, and costs incurred to enforce the provisions of this section.

Claims shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in unfair trade practice.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this agreement.

### **PART 3: INSURANCE**

The selected Consultant shall furnish Commercial General Liability, to include Products and Completed Operations, in the amount of \$1,000,000 combined single limit; \$2,000,000 aggregate. In addition, evidence of Workers' Compensation and Stop-Gap Employer's Liability for a limit of \$1,000,000 shall be provided. Further, the selected consultant shall furnish Automobile Liability with a limit of \$1,000,000.

**Such policy/policies shall endorse King County, and its appointed and elected officials, officers, agents and employees as additional insureds.**

King County reserves the right to approve deductible/self-insured retention levels and the acceptability of insurers.

### **PART 4: CORRECTIVE ACTION**

If the County determines that a breach of contract has occurred, that is the Consultant has failed to comply with any terms or conditions of this Contract or the Consultant has failed to provide in any manner the work or services agreed to herein, and if the County deems said breach to warrant corrective action, the following sequential procedure will apply:

- A. The County will notify the Consultant in writing of the nature of the breach;

- B. The Consultant shall respond in writing within three (3) working days of its receipt of such notification, which response shall indicate the steps being taken to correct the specified deficiencies. The corrective action plan shall specify the proposed completion date for bringing the Contract into compliance, which date shall not be more than ten (10) days from the date of the Consultant's response; unless the County, at its sole discretion, specifies in writing an extension in the number of days to complete the corrective actions;
- C. The County will notify the Consultant in writing of the County's determination as to the sufficiency of the Consultant's corrective action plan. The determination of sufficiency of the Consultant's corrective plan shall be at the sole discretion of the County;
- D. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, or the Consultant's corrective action plan is determined by the County to be insufficient, the County may commence termination of this Contract in whole or in part pursuant to Section IV.B;
- E. In addition, the County may withhold any payment owed the Consultant or prohibit the Consultant from incurring additional obligations of funds until the County is satisfied that corrective action has been taken or completed; and
- F. Nothing herein shall be deemed to affect or waive any rights the parties may have pursuant to Section IV, Termination Clauses, Subsections A, B, C, and D.

## **PART 5: ASSIGNMENT/SUBCONTRACTING**

- A. The Consultant shall not assign or subcontract any portion of this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. Said consent must be sought in writing by the Consultant not less than fifteen (15) calendar days prior to the date of any proposed assignment.
- B. "Subcontract" shall mean any agreement between the Consultant and a Subcontractor or between Subcontractors that is based on this Contract, provided that the term "subcontract" does not include the purchase of (i) support services not related to the subject matter of this contract, or (ii) supplies.

## **SECTION V - ADDITIONAL INFORMATION & REQUIREMENTS**

- A. Non-Discrimination in Benefits to employees with Domestic Partners

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. The successful Contractor, bidder or proposer shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a contract. The EB Compliance forms, and Ordinance 14823 are available online at: <http://www.metrokc.gov/finance/procurement/forms.asp>

- B. Disclosure – Conflict of Interest

King County Code Chapter 3.04 is incorporated by reference as if fully set forth herein and the Consultant agrees to abide by all the conditions of said Chapter. Failure by the Consultant to comply with any requirements of this Chapter shall be a material breach of contract.

1. The Consultant covenants that no officer, employee, or agent of the County who exercises any functions or responsibilities in connection with the planning and implementation of the scope of services funded herein, or any other person who presently exercises any functions or responsibilities in connection with the planning and implementation of the scope of services funded herein shall have any personal financial interest, direct or indirect, in this Contract. The Consultant shall take appropriate steps to assure compliance with this provision.
2. If the Consultant violates the provisions of Section V (1) or does not disclose other interest required to be disclosed pursuant to King County Code Section 3.04.120, as amended, the County will not be liable for payment of services rendered pursuant to this Contract. Violation of this Section shall consti-

tute a substantial breach of this Contract and grounds for termination pursuant to Section IV (B) above as well as any other right or remedy provided in this Contract or law.

3. The King County Board of Ethics maintains a website that provides information regarding King County ethics requirements. To review specific areas of the Code of Ethics that relate to contractors and vendors, follow this path: <http://www.metrokc.gov/ethics/>, and access 1) The Code of Ethics, "Employee Code of Ethics 3.04", and 2) Advice and Guidance "Doing Business with Contractors, Vendors, Clients and Customers". Under "Employee Code of Ethics 3.04", there are two areas of the code that speak specifically to contractors: 3.04.060 B1 (attempting to secure preferential treatment) and 3.04.120 (disclosure of interests by consultants requirement). There are other sections under conflict of interest, 3.04.030 that are directed to employees and govern their relationships with contractors.

#### C. Recycled/Recyclable Products

It is the policy of King County to use recycled materials to the maximum extent practicable (King County Code Chapter 10.16). Consultants able to supply products containing recycled materials that meet performance requirements are encouraged to offer them in bids and proposals and to use them wherever possible in fulfillment of contracts.

The Consultant shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract and shall ensure that, whenever possible, the cover page of each document printed on recycled paper bears an imprint identifying it as recycled paper. If the cost of recycled paper is more than fifteen percent higher than the cost of non-recycled paper, the Consultant may notify the Contract Administrator, who may waive the recycled paper requirement. The Consultant shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical in the fulfillment of this Contract.

#### D. Proprietary Rights

The parties to this Contract hereby mutually agree that if any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the County. The foregoing shall not apply to existing training materials, consulting aids, check lists and other materials and documents of the Consultant which are modified for use in the performance of this Contract.

#### E. Supported Employment Program

King County encourages the creation of supported employment programs for developmentally and/or severely disabled individuals. The County itself has such a program and is actively seeking to do business with those contractors and consultants that share this employment approach. If your firm has such a program, or intends to develop such a program during the life of this contract, please submit documentation supporting this claim with your bid/proposal/qualifications. If you have questions, or need additional information, please contact Ray Jensen, Community & Human Services, Developmental Disabilities Division, (206) 296-5268 or the County's Business Development and Contract Compliance Section at (206) 205-0700.

### SECTION VI - MAINTENANCE OF RECORDS/AUDITS

- A. The Consultant shall maintain, and shall require any sub-consultant to maintain, accounts and records, including personnel, property, financial and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all project funds and compliance with this Contract. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Contract. The Consultant shall make such documents available to the County for inspection, copying, and auditing upon request.
- B. All records referenced in subsection (A) shall be maintained for a period of six (6) years after completion of work or termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14, or unless a longer retention period is required by law.



- C. The Consultant shall provide access to its facilities, including those of any sub-consultant, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this Contract. The County will give advance notice to the Consultant in the case of fiscal audits to be conducted by the County.
- D. The Consultant agrees to cooperate with the County or its designee in the evaluation of services provided under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluation shall be maintained and disclosed in accordance with RCW Chapter 42.17.
- E. If the Consultant received a total of \$500,000.00 or more in federal financial assistance during its fiscal year from the County, and is a non-profit organization or institution of higher learning or a hospital affiliated with an institution of higher learning, and is, under this Contract, carrying out or administering a program or portion of a program, it shall have an independent audit conducted of its financial statement and condition, which shall comply with the requirements of GAAS (generally accepted auditing standards), GAO's Standards for Audits of Governmental Organizations, Programs, Activities, and Functions and OMB Circulars A-133 and A-128, as amended and as applicable. Consultants receiving federal funds from more than one County Department or Division shall be responsible for determining if the combined financial assistance is equal or greater than \$500,000.00. The Consultant shall provide one copy of the audit report to each County division providing federal financial assistance to the Consultant no later than six (6) months subsequent to the end of the Consultant's fiscal year.

## **SECTION VII – REQUIRED FORMS**

The following completed forms will be required from the selected contractor, prior to contract award:


- A. King County Personnel Inventory Report
- B. Affidavit and Certificate of Compliance with King County Code 12.16
- C. Statement of Compliance - Union or Employee Referral Agency Statement (if applicable)
- D. King County Code 3.04.120 and Consultant Disclosure Form
- E. 504/ADA Disability Assurance of Compliance and Corrective Action Plan
- F. Equal Benefits Compliance Declaration Form

Copies of these forms are available by contacting the King County Procurement and Contract Services Division. They are available in paper form, or may be obtained via e-mail. Please contact Cathy Betts at 206-263-4267 or Roy L. Dodman at 206-263-4266, or by sending an e-mailed request to [cathy.betts@metrokc.gov](mailto:cathy.betts@metrokc.gov) or [roy.dodman@metrokc.gov](mailto:roy.dodman@metrokc.gov).



## SECTION VIII – BID PROPOSAL CHECKLIST

- A. One (1) signed copy of entire RFP package.
- B. One (1) signed copy of any Addendum that was issued. (If it has signature box at bottom of first page, it must be returned.)
- C. One (1) unbound copy of proposal response marked “Original.”
- D. Five (5) copies of proposal response.
- E. One (1) signed copy of Attachment K & L (page 16).
- F. Complete the Bid Identification Label below (or reasonable facsimile) and attach it to a prominent place on the exterior of the submission envelope, box, etc.

<b>URGENT – SEALED BID ENCLOSED</b>	
<b>Do Not Delay – Deliver Immediately</b>	
	King County Procurement & Contract Services Section Exchange Building, 8 <sup>th</sup> Floor 821 2nd Ave, EXC-FI-0862 Seattle, WA 98104-1598
<b>King County</b>	
<b>Bid No.</b>	<b>RFP 173-04CMB</b>
<b>Bid Title</b>	<b>Waterborne Transit Policy Study</b>
<b>Due Date</b>	
<b>Vendor</b>	